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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

2:21-CR-00058-TOR-1

13 vs.

United States' Sentencing
Memorandum

14 ALEJANDRO NOE MANZO,

15 Defendant.

16 Plaintiff, United States of America, by and through Vanessa R. Waldref, United
17 States Attorney for the Eastern District of Washington, and Patrick J. Cashman,
18 Assistant United States Attorney for the Eastern District of Washington, submits the
19 following sentencing memorandum:

20 I. Background

21 The United States requests an opportunity to file additional materials in
22 response to any memorandum or factual assertions filed by the Defendant.

23 The United States relies on the facts contained within the United States
24 Probation Office's Pre-Sentence Investigation Reports and Addendum (PSIR). ECF
25 36 and 37.

26 Beginning the spring of 2020, the Bureau of Alcohol, Tobacco, Firearms and
27 Explosives (ATF) and the Federal Bureau of Investigation (FBI) began investigating
28 individuals associated with Sureno street gangs in the Moses Lake area. During the

1 investigation, special agents identified the Defendant as possibly being involved in
2 illegal activity. On May 4, 2021, law enforcement officers executed a search warrant
3 at the residence where the Defendant resided. During the execution of this search
4 warrant, law enforcement officers located a Taurus, model PT 140, .40 caliber pistol,
5 bearing serial number SYG 04426, .40 caliber ammunition, and a loaded .40 caliber
6 pistol magazine. ECF No. 37, ¶34. Also located was evidence of dominion and
7 control associated with the Defendant. *Id.* A record check on the pistol's serial
8 number indicated it was previously reported stolen out of Kennewick, Washington.
9 ECF No. 37, ¶38.

10 On May 5, 2021, the Defendant was indicted one count of Felon in Possession
11 of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). ECF No. 37, ¶1. On
12 January 12, 2022, the Defendant entered a plea of guilty to the sole count of the
13 indictment. ECF No. 37, ¶3.

14 II. Sentencing Calculations

15 The United States agrees that the base offense level is 14, as outlined in the
16 PSIR, because the Defendant was a prohibited person. ECF No. 37, ¶57. The United
17 States agrees that the offense level should be increased by 2 levels because the Taurus
18 pistol was previously reported stolen at the time of the Defendant's possession. ECF
19 No. 37, ¶58. The United States notes the PSIR concludes that an additional 2 level
20 should be added to the base offense level because the offense involved three or more
21 firearms. ECF No. 37, ¶59. Part of this enhancement is based upon statements made
22 by a confidential informant and complainant. *Id.* The United States respects the
23 United States Probation Office's position, however, the United States does not intend
24 to offer evidence at sentencing relevant to this enhancement beyond what is contained
25 within the PSIR. The United States notes the Defendant intends to object to the
26 application of this enhancement, which the United States will provide a response if
27 appropriate.
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1 The United States agrees the Defendant's offense level should be decreased by
 2 3 levels for acceptance of responsibility. The Defendant therefore has a total offense
 3 level of 13.¹ The Criminal History Category as calculated by the United States
 4 Probation Office (USPO), which the Government agrees, is III. The Defendant
 5 therefore has a sentence range of 18 to 24 months.

6 III. United States' Sentencing Recommendation

7 The United States respectfully submits that a term of 18 months incarceration,
 8 followed by a 3-year term of supervised release, would be a "reasonable" sentence
 9 under the facts and circumstances of this case and would not be greater than necessary
 10 to promote the purpose and policy of the Federal Sentencing Act, 18 U.S.C. §3553(a).

11 In accordance with the Supreme Court's decision in *United States v. Booker*,
 12 543 U.S. 220 (2005), sentencing courts must engage in a two-step process when
 13 imposing a sentence. The first step requires a court to calculate properly the advisory
 14 Guidelines sentencing range. *See United States v. Cantrell*, 433 F.3d 1269, 1279-80
 15 (9th Cir. 2006). A sentencing court should use this range as a starting point for its
 16 assessment of an appropriate sentence. *Id.* The second step requires a sentencing
 17 court to impose a "reasonable" sentence in light of all the factors under 18 U.S.C. §
 18 3553(a). *See United States v. Marcial-Santiago*, 447 F.3d 715, 717 (9th Cir. 2006).²
 19 A wide range of sentences may be deemed reasonable. *See United States v.*
 20 *Mohamed*, 459 F.3d 979, 989 (9th Cir. 2006) ("reasonableness is a range, not a
 21 point."(quoting *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005)).
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 23

24 ¹ The United States calculates the adjusted offense level without including the two-
 25 level adjustment regarding the number of firearms. If the Court concludes the two-
 26 level adjustment is appropriate, the United States would concur the adjusted offense
 27 level would be 15, with a corresponding advisory guideline range of 24-30 months.
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1 In fulfilling its responsibilities under 18 U.S.C. § 3553, the court is not limited
2 in the information that it may consider; rather, it may consider any evidence that bears
3 upon the defendant's background, character, and conduct:

4 No limitation shall be placed on the information concerning the
5 background, character, and conduct of a person convicted of an offense
6 which a court of the United States may receive and consider for the
purpose of imposing an appropriate sentence.

7 18 U.S.C. § 3661. The information which the court may consider extends to prior
8 allegations for which no criminal charges were filed or for which a defendant was
9 previously acquitted. *United States v. Putra*, 519 U.S. 148 (1997).

10 Although *Booker* requires the court to consider the factors identified in 18
11 U.S.C. § 3553(a), that requirement "does not necessitate a specific articulation of each
12 factor separately, but rather a showing that the district court considered the statutorily-
13 designated factors in imposing a sentence." *See United States v. Knows His Gun*, 438
14 F.3d 913, 918 (9th Cir. 2006); *See also Rita v. United States*, 551 U.S. 338 (2007).

15 The factors a sentencing judge must consider are the nature and circumstances of the
16 offense and the history and characteristics of the defendant. The sentencing court
17 must also consider the need for the sentence imposed to reflect the seriousness of the
18 offense; promote respect for the law; provide just punishment; afford adequate
19 deterrence to criminal conduct; protect the public from further crimes of the
20 defendant; provide the defendant with needed educational training, medical care, or
21 other correction treatment. A sentencing court must also consider the "the need to
22 avoid unwarranted sentencing disparities among defendants with similar records who
23 have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).

24 In the present case, the Defendant was convicted of being a felon in possession
25 of a firearm. The Defendant is a multi-convicted felon and prohibited from possessing
26 any firearms and ammunition. A sentence of 18 months, while not the longest period
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1 of confinement served by the Defendant, is sufficient given the nature and
2 circumstances of this particular case.

3 A sentence of 3 years supervised release is further warranted to ensure the
4 Defendant remains law-abiding and drug free upon his release from any custody
5 imposed by the Court.

6 IV. Conclusion

7 The Government believes a sentence of 18 months followed by a 3-year term of
8 supervision is justified under 18 U.S.C. § 3553(a) and believes that it is an appropriate
9 and reasonable sentence.

10 DATED: March 30, 2022.

11 Vanessa R. Waldref
12 United States Attorney

13 s/ Patrick J. Cashman
14 Patrick J. Cashman
15 Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

Emily Gause

s/ Patrick J. Cashman

Patrick J. Cashman

Assistant United States Attorney